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US EPA RECORDS CENTER REGION 5



426520

January 17, 2012

VIA U.S. MAIL AND E-MAIL

Michelle Kerr
Remedial Project Manager
U.S. Environmental Protection Agency
-- Region 5
Superfund Division (SR-6J)
77 West Jackson Blvd.
Chicago, Illinois 60604-3590

Re: Schnitzer Steel's Response to General Notice Letter for the Chemetco
Superfund Site in Hartford, Illinois

Dear Ms. Kerr:

This letter is submitted in response to U.S. Environmental Protection Agency's ("EPA") November 30, 2011 General Notice Letter ("Response") addressed to CT Corporation System/Schnitzer Steel Products, Co. ("Schnitzer") concerning the Chemetco Superfund Site in Hartford, Illinois ("Chemetco Site") (herein the "Response").

Schnitzer submits this Response with the understanding that Schnitzer has the ability to supplement and/or revise this Response on or before January 31, 2012 to enable Schnitzer to review the information that is contained on the DVD that EPA promised to distribute to the potentially responsible parties during the informational meeting on December 20, 2011. Mr. Thomas Martin, Associate Regional Counsel, and Mr. John Kindschuh of our office spoke on January 5, 2012. During this conversation, Mr. Martin stated that although Schnitzer is required to submit an initial Response by January 17, 2012, Schnitzer has the option to supplement and/or revise the Response by January 31, 2012 to incorporate any information from the DVD in its Response. Mr. Kindschuh received a copy of the DVD around 3:00 pm on Friday, January 13, 2012, one business day prior to the January 17 deadline. Importantly, while Schnitzer conducted a thorough investigation in preparing its Response, Schnitzer expressly reserves the right to supplement and/or revise this Response in light of the fact that Schnitzer has, to date, not reviewed the information contained on the DVD.

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In connection with this Response, Schnitzer expressly denies any liability under any environmental law, including but not limited to CERCLA Sections 106 and 107(a), as an arranger, transporter, current or previous owner, and/or current or previous operator of hazardous substances, pollutants or contaminants at the Chemetco Site. Schnitzer contends that any materials that were transported from Schnitzer's premises by Chemetco to the Chemetco Site meet the criteria necessary to establish a legal defense under the Superfund Recycling Equity Act of 1999 ("SREA"). Moreover, Schnitzer does not believe that any of the materials that were transported by Chemetco to the Chemetco Site meet the exclusions under SREA per 42 U.S.C. 9627(f). Nothing in this Response should be construed as a waiver of any defenses that may be available to Schnitzer, including but not limited to defenses under any state or federal statute, judicial decision, rule, regulation or policy.

As EPA is most likely aware, Schnitzer submitted its response and related attachments to Illinois Environmental Protection Agency's ("IEPA") 104(e) request for information on May 27, 2008. Schnitzer also supplemented its response by submitting additional documents to IEPA on January 15, 2009. If EPA needs a copy of Schnitzer's response and/or related attachments to IEPA's 104(e) request, please advise.

Regardless of Schnitzer's contentions regarding defenses discussed above, alternatively, based upon its review of the information available to date, Schnitzer contends that it will be eligible for a *de minimis* settlement at the Chemetco Site because Schnitzer's alleged contribution of materials to the Chemetco Site is relatively small. During the Chemetco Site information meeting on December 20, 2011, EPA indicated that the specific monetary amounts for the *de minimis* settlement have yet to be determined. Considering that Schnitzer's alleged contribution of materials to the Chemetco Site is comparatively small (i.e., at most 1,020,396 pounds), and at least 103 potentially responsible parties have allegedly contributed more material to the Chemetco Site, it is appropriate that Schnitzer be eligible for consideration for a *de minimis* settlement. We request that EPA please continue to advise Schnitzer's counsel as to the development of the criteria for the *de minimis* parties at the Chemetco Site.

Based upon its review of the information available to date, Schnitzer is not in a position to commit to participate in future negotiations with EPA and the other PRPs at the Chemetco Site at this time. As mentioned above, Schnitzer believes that any materials that were transported from Schnitzer's premises by Chemetco to the Chemetco Site meet the criteria necessary to apply for a defense under SREA. Moreover, many, if not nearly all, of the materials that Chemetco purchased from Schnitzer's premises F.O.B. were commodity grade substances that, to Schnitzer's understanding, were destined for recycling markets and locations other than the Chemetco Site (i.e. California, China, etc.). Additionally, based upon its review of the information available to date, Schnitzer does not agree with EPA's assertion that Schnitzer allegedly contributed the amounts and types of materials to the Chemetco Site that are listed in EPA's General Notice Letter. Schnitzer believes that it qualifies for the SREA legal defense, and since there is no documentation indicating that Schnitzer is a "key player" at the Chemetco Site, Schnitzer does not intend to participate in future negotiations regarding the Chemetco Site at this time.

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As discussed above, Schnitzer reserves the right to supplement and/or revise this Response in light of its review of the documents that EPA has included on the DVD. Please let me know if you have any questions regarding Schnitzer's Response. Schnitzer also remains willing to discuss SREA and its applicability to the Chemetco Site with EPA if EPA desires. We appreciate your efforts in continuing to keep Schnitzer updated with respect to any developments at the Chemetco Site.

Sincerely,



Christopher E. Erker
Partner

cc: Jim Jakubiak, Schnitzer Steel Industries, Inc.
John Kindschuh, Esq.
Monica Rodal, Esq.



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January 31, 2012

VIA E-MAIL AND US MAIL

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Superfund Division (SR-6J)
77 West Jackson Blvd.
Chicago, Illinois 60604-3590

Re: Schnitzer Steel's Supplemental Response to General Notice Letter for the
Chemetco Superfund Site in Hartford, Illinois

Dear Ms. Kerr:

This letter supplements Schnitzer Steel Products, Company's ("Schnitzer") response to the General Notice Letter concerning the Chemetco Superfund Site in Hartford, Illinois ("Chemetco Site") dated January 17, 2012 (herein the "Supplemental Response"). Schnitzer expressly incorporates its January 17, 2012 initial response into this Supplemental Response.

Schnitzer has reviewed the information that is contained on the DVD that EPA promised to distribute to the potentially responsible parties ("PRPs") during the informational meeting on December 20, 2011 and that Schnitzer's counsel received on Friday, January 13, 2012. As discussed below, based upon Schnitzer's review of the documents in the DVD, Schnitzer disagrees with EPA's assertion that Schnitzer allegedly contributed the amounts and types of materials to the Chemetco Site that are listed in EPA's General Notice Letter dated November 30, 2011.

According to EPA's General Notice Letter, Schnitzer allegedly contributed 1,020,396 pounds of materials to the Chemetco Site. The October 17, 2005 Phase 1 Report prepared by Camp Dresser & McKee Inc. provided on the DVD (herein "CDM Report") alleged that Schnitzer contributed 1,020,396 pounds in "Supplier Weight." See CDM Report, page 2-11.

On January 18, 2012, you indicated via e-mail that the "primary documentation" that EPA used to identify potentially responsible parties ("PRPs") at the Chemetco Site is the recovered transactional database that is included on the DVD. Moreover, on

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January 26, 2012, you stated that for the “vast majority” of the PRPs, the documentation that EPA relies upon to link a specific company to the Chemetco Site is the transactional database.

Accordingly, Schnitzer has reviewed and analyzed the transactional database on the DVD to the best of its ability in an effort to understand how EPA arrived at the 1,020,396 pound figure that appears in the General Notice Letter and the CDM Report. It appears that the information providing Schnitzer’s alleged transactions with Chemetco appears in the worksheet “SAMPFL” in the transactional database. The database lists forty-two (42) separate transactions where Schnitzer¹ and Chemetco supposedly engaged in a transaction. Although the database did not list the dates for three (3) of the transactions, the remaining thirty-nine (39) transactions² purportedly occurred from April 2000 until April 2001. Significantly, according to the transactional database, the total weight associated with all forty-two transactions is 555,901 pounds.

Importantly, Schnitzer is unable to find evidence from the transactional database indicating that Schnitzer allegedly contributed 1,020,396 pounds of materials to the Chemetco Site. Rather, the transactional database shows that Schnitzer contributed only 555,901 pounds of materials, a number that is significantly less than 1,020,396 pounds. Since the transactional database is the primary documentation that EPA relied upon to identify PRPs at the Chemetco Site, Schnitzer respectfully requests that EPA, at a minimum, update its General Notice Letter to indicate that the transactional database demonstrates that Schnitzer provided, at most, 555,901 pounds of materials to the Chemetco Site. Moreover, in light of this data, Schnitzer respectfully requests that EPA reclassify Schnitzer as a party that has not arranged for over 1,000,000 pounds of materials to have been sent to the Chemetco Site.

In short, based upon its review of the transactional database and all of the documents on the DVD, Schnitzer does not agree with EPA’s assertion that Schnitzer allegedly contributed 1,020,396 pounds of materials to the Chemetco Site that are listed in EPA’s General Notice Letter. Rather, this number should be revised to, at most, 555,901 pounds of materials. As discussed Schnitzer’s initial response dated January 17, 2012, Schnitzer believes that any materials that were transported from Schnitzer’s premises by Chemetco to the Chemetco Site meet the criteria necessary to apply for a defense under Superfund Recycling Equity Act of 1999 (“SREA”). Many of the materials that Chemetco purchased from Schnitzer’s premises F.O.B. were commodity grade substances that, to Schnitzer’s understanding, were destined for recycling markets and locations other than the Chemetco Site.

¹ Schnitzer is listed both as “Schnitzer” and “Schnitzer Steel” in the transactional database. Both “Schnitzer” and “Schnitzer Steel” have the same supply code of 3LF.

² The dates reported by the database for 39 of the 42 transactions are as follows: 3 transactions on April 4, 2000; 4 transactions on April 7, 2000; 5 transactions on May 31, 2000; 4 transactions on July 5, 2000; 4 transactions on July 6, 2000; 5 transactions on August 7, 2000; 3 transactions on August 18, 2000; 1 transaction on August 25, 2000; 1 transaction on September 4, 2000; 2 transactions on September 5, 2000; 1 transaction on March 7, 2001; 3 transactions on March 15, 2001; and 3 transactions on April 3, 2001.

Michelle Kerr
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Therefore, these additional considerations may further reduce Schnitzer's purported contribution of 555,901 pounds of materials to the Chemetco Site.

Please let me know if you have any questions regarding Schnitzer's Supplemental Response.

Sincerely,



Christopher E. Erker
Partner

cc: Jim Jakubiak, Schnitzer Steel Industries, Inc.
John Kindschuh, Esq.
Monica Rodal, Esq.